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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/619,051	07/18/2000	Robert S. Blackmore	POU920000126US1	9648
46369	7590	05/03/2006	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI P.C. 5 COLUMBIA CIRCLE ALBANY, NY 12203			STRANGE, AARON N	
			ART UNIT	PAPER NUMBER
			2153	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/619,051

Applicant(s)

BLACKMORE ET AL.

Examiner

Aaron Strange

Art Unit

2153

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Response to Arguments

1. With regard to Applicant's extensive arguments presented in the response filed 4/17/06, the Examiner has noted the following major arguments, which will be discussed individually:

- a. Applicant argues that "the host memory" described in Sethuram are actually "operating system level buffers", and that further interaction between the application level program and the operating system is required to transfer the contents of the "host memory" to a user's storage area.
- b. Applicant argues that "application level address space locations" are the same as "a users address space".
- c. Applicant argues that the private pool of buffers disclosed by Gentry are not within the address space of the program which has been "given access to its own pool".

2. With regard to argument (a), Applicant has merely provided an assertion that the "host memory" disclosed by Sethuram is actually "operating system level buffers". Applicant's only evidence in support of such an assertion is that "There is no teaching, disclosure, or suggestion that the final data destination produced by their process is something other than an area of memory that is under direct control and accessible only with the authority of the host's operating system". A lack of explicit disclosure that the memory locations are not under direct control of the operating system is simply not a teaching that they are. There does not appear to be any disclosure defining whether the

"host memory" is application level or operating system level memory. For this reason, Gentry was cited to teach the direct transfer of data to application level memory.

3. With regard to argument (b), the Examiner is aware that there is no requirement that the language of the claims match the exact wording found in Applicant's specification or elsewhere. However, the terms "user address space" and "application level address space" are significantly different in scope. Applicant is reminded that compliance with CFR 1.111(b) requires specifically pointing out how the language of the claims patentably distinguishes them from the references.

4. With regard to argument (c), the Examiner respectfully disagrees. Upon being given access to its own pool of buffers, those buffers are within the program's address space. As Applicant notes, the present invention issues commands directed to the operating system level, but after the commands have been issued, data transfer occurs directly into the users address space without any further reference to the operating system (Page 10 of Remarks). This is substantially identical to the disclosure cited in Gentry. Operating system level commands may be issued to set up the private pool of buffers for a program, but all subsequent data transfer occurs by DMA to send the data to its final destination, without any further reference to the operating system or data storage areas under control of the operating system (at least Col 2, Lines 46-63).

5. The Examiner appreciates Applicant's comments regarding the willingness of Applicant's attorney to discuss language modifications that would be mutually acceptable. The Examiner would be willing to discuss any proposed amendments to the claims. Applicant is encouraged to contact the Examiner to schedule an interview to discuss any proposed amendments if Applicant feels prosecution could be expedited.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS 4/27/2006


KRISNA LIM
PRIMARY EXAMINER